In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 776

UTAH PUBLIC SERVICE COMMISSION,
Appellant,

vs.

EL PASO NATURAL GAS COMPANY, et al,
Appellees.

On Appeal from the United States District Court
for the District of Utah

Petition for Rehearing

To the United States Supreme Court and the Justices Thereof.

San Diego Gas & Electric Company, Appellee, presents this, its petition, for a rehearing of the above-entitled cause, and, in support thereof, respectfully shows:

I

On June 16, 1969, the Court issued a decision on the merits in the above-entitled matter without notice to the

parties. The Court was thus deprived of adequate briefing and argument regarding issues, particularly concerning division of gas reserves, the resolution of which will have a lasting, and, if the decision stands, detrimental effect on millions of gas and electric consumers in the State of California.

II

The Court has said with regard to this prolonged case, "In the present case protection of California interests in a competitive system was at the heart of our mandate directing divestiture". *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967) 135. Yet, the June 16, 1969 decision is injuriously inconsistent with the Court's goal of "protection of California interests". This failure of the Court to meet its own standards results from a misunderstanding of the "California interests" apparently due to lack of notice and inadequate briefing of the issues of the case.

III

In *Cascade*, the Court said with regard to division of gas reserves:

1. "The gas reserves granted the New Company must be no less in relation to existing reserves than Pacific Northwest had when it was independent", and
2. "the new gas reserves developed since the merger must be equitably divided between El Paso and the New Company" 386 U.S. at 136-7.

The June 16, 1969 decision does not appear to question compliance by Judge Chilson with the first standard. The Court's criticism is directed at the division of the new gas reserves. The Court finds that even though Judge Chilson "gave the New Company more than 50% of the net

additions to the reserves developed since the merger" this was not enough—this was not "equitable". But the newly discovered gas which the Court decrees must be given to New Company are reserves for which the California consumer has already paid substantial sums.

IV

El Paso Natural Gas Company ("El Paso"), through rates, legally authorized by the Federal Power Commission, recoups its cost of service including its expenses of exploration, acquisition, and development of natural gas in the San Juan Basin and elsewhere. These charges by El Paso are passed on as costs to the California consuming public. Californians are by far the major purchasers of El Paso gas. Thus, the California consumers have paid for the exploration, acquisition and development of much of the gas reserves which the Court now seeks to divert to New Company. Most of these same reserves were, absent the June 16, 1969 decision, committed to serve the California consumer.

V

It is small comfort to California consumers that the additional new gas reserves which the Court now says New Company must have, are for the purpose of mounting a competitive challenge in California. There is no assurance this gas will ever come to California. If it comes, it will be too late to supply the State's current requirements. While we would welcome the additional competition of New Company, we strongly oppose sacrificing our ability to meet the requirements of our customers for the sole purpose

of providing a fourth competitor in the California gas pipeline market. In other words, we believe Judge Chilson has been more than generous with New Company already, in giving it gas reserves that were developed with California consumer dollars.

VI

In the practical resolution of the question of whether another pipeline can compete in California the stake is high. That stake, to the extent of gas reserves, has been paid for in large part by the California consumer. The value of these reserves has recently increased because of growing scarcity of new supplies of natural gas of interstate pipeline amounts. Recently, Transwestern Pipeline Company informed southern California gas distributors that they would be unable to supply an expected much needed increment of gas. Further, El Paso indicated it would be unable to provide substitute supplies. Now, the Court says that the gas reserves California customers are depending upon shall be further reduced by diverting them to New Company. The California consumer did not promulgate the condemned merger. We cannot understand why we should be punished for it by further depletion of needed gas reserves.

VII

The probability of California customers receiving the diverted gas reserves lessens with every passing day. To successfully compete in California, New Company, no matter how strong it may be, will face substantial economic and gas supply problems. There are three healthy competitors already in the field. These competitors can increase pipeline capacity on an incremental basis. New Company

must build a new pipeline under inflated cost conditions. Financing costs are at an all time high. Although the Lower Court adopted a financing arrangement which was highly beneficial to New Company, the Court did not recognize this. The California customer has a vital interest in seeing that if a competitor enters the field immediately, it be strong and healthy. We believe Judge Chilson devised a plan which had the best chance of accomplishing this additional competition and at the same time protecting California interests respecting gas supplies, should the competitive threat fail to materialize.

CONCLUSION

The Court said in *Cascade* that protection of California interests was at the heart of its divestiture mandate. Unhappily, however, the interests of the California consuming public have been misunderstood or ignored in the Court's June 16, 1969 decision. That decision will result in depriving California of an assured gas supply to meet the rapidly increasing demands of the consumers of this State, in the illusory hope that some future successful New Company might sometime (the case has already gone on for more than 10 years and been before this court 4 times) be a fourth competitor in the California gas market. All this has been done without notice, without opportunity for briefing and hearing. In all deference, we urge that Judge Chilson, the California interests, the Pacific Northwest interests, and all those who have labored diligently to carry out the mandate of the Court deserve either the Court's

complete attention, including complete briefing, or no attention at all (dismissal). We do not deserve a "lick and a promise".

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition For Rehearing is presented in good faith and not for purposes of delay.

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